

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ROBERTO MARROQUIN,
Plaintiff,

vs.

FLINTCO, INC.,
Defendant.

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No. 1:15-CV-00718

JURY

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR CONTINUANCE

Plaintiff asks the Court to continue the submission of Defendant's motion for summary judgment and to allow Plaintiff additional time to depose a corporate representative of Defendant, Defendant's employee (Jose Martinez), and witness to the incident Miguel Angel Bolanos, as authorized by Federal Rule of Civil Procedure 56(d)(2).

A. INTRODUCTION

1. Plaintiff is Roberto Marroquin; Defendant is Flintco, Inc.
2. Plaintiff sued defendant for negligence arising from injuries that Plaintiff sustained while installing windows in a dormitory on the campus of the University of Texas at Austin when an exterior elevator allegedly operated by one of Defendant's employees crushed him.
3. Defendant filed a motion for summary judgment on August 17, 2016. Plaintiff's deadline to file a response is August 31, 2016.
4. Plaintiff asks the Court for additional time to depose the above persons because Plaintiff needs their testimony as evidence to rebut the claims presented in Defendant's motion for summary judgment. Without this testimony, Plaintiff will be unable to respond to Defendant's claims.

B. ARGUMENT

5. A court may allow additional time for a party to obtain affidavits or declarations or to conduct discovery. Fed. R. Civ. P. 56(d)(2). Motions for continuance are broadly favored and should be liberally granted.¹

6. A court may allow additional time for a party to obtain affidavits or declarations or to conduct discovery if the motion for continuance is made within a reasonable time after receiving the motion for summary judgment and before the deadline for filing a response.²

7. Plaintiff cannot adequately respond to Defendant's motion for summary judgment by August 31, 2016 because there are contested factual issues regarding Plaintiff's and Defendant's version of the events that caused Plaintiff's injuries. Plaintiff's employee, Jose Martinez, and independent witness, Miguel Angel Bolanos, were riding in the elevator prior to and at the moment Plaintiff was crushed by the elevator. Plaintiff needs their testimony in order to determine who was operating the elevator at the time of the incident. Without this testimony Plaintiff cannot adequately respond to Defendant's motion for summary judgment.

8. Plaintiff also requires the testimony of a corporate representative of Defendant regarding the events that led to Plaintiff's injury, as well as to understand the control of work at Defendant's job site. Again, without such testimony, Plaintiff cannot adequately respond to Defendant's motion for summary judgment.

9. Plaintiff will suffer actual and substantial prejudice if he is not permitted to take the above-mentioned depositions.

¹ *Culwell v. City of Fort Worth*, 468 F.3d 868, 871 (5th Cir. 2006); see *In re PHC, Inc. S'holder Litig.*, 762 F.3d 138, 143 (1st Cir. 2014).

² See Fed. R. Civ. P. 56(d)(2); see *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 44 (1st Cir. 1998).

10. This request for continuance will not prejudice Defendant because the discovery period in this case is still ongoing, and requests for dates to schedule each deposition had previously been proposed to Defendant's counsel prior to the filing of Defendant's motion for summary judgment.

11. This request for continuance is not merely for delay, but so that justice may be done.

12. Therefore, Plaintiff asks the Court to allow him additional time until at least October 18, 2016 to respond to Defendant's motion for summary judgment.

Respectfully submitted,

KOMIE & MORROW LLP

By: /s/ Scott J. Braden
Christopher T. Morrow
State Bar No. 00791307
chris@komieandmorrow.com
Scott J. Braden
State Bar No. 24067525
scott@komieandmorrow.com
7703 North Lamar Boulevard, Ste. 410
Austin, Texas 78752
(512) 338-0900 [Tel.]
(512) 338-0902 [Fax]
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument and all attachments have been served on all opposing counsel listed below on the 25th day of August, 2016.

Sent Via Facsimile: 512-708-8777

And via email: SCrowley@thompsoncoe.com

Sean M. Crowley

THOMPSON, COE, COUSINS & IRONS, LLP

701 Brazos, Suite 1500

Austin, Texas 78701

Telephone: 512-708-8200

Facsimile: 512-708-8777

ATTORNEYS FOR FLINTCO. INC.

/s/ Scott J. Braden

Scott J. Braden